



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: **201317017**

Release Date: 4/26/2013

Date: February 1, 2013

UIL Code: 529.00-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

529 Promotional Period =  
Amount 1 =  
Amount 2 =  
IRA Promotional Period =  
Principal 1 =  
Principal 2 =  
State =

This is in response to your ruling request, dated \*\*\*\*\*. You are requesting rulings with respect to the information reporting requirements under §§ 6049 and 6041 of the Internal Revenue Code ("Code") for bonus payments made or to be made by you pursuant to your IRA bonus plan and your § 529 bonus plan.

Facts:

You are a common parent of a consolidated group of corporations which file annual consolidated U.S. Corporation Income Tax Returns on an accrual method, calendar year basis. We use the term "You" to refer to the consolidated group. You provide a full range of banking, investment, asset management, and other financial and risk management products and services. You have established two incentive payment programs for your clients - the IRA Bonus Plan and the 529 Bonus Plan.

Under the IRA Bonus Plan, for your clients who open a new individual retirement account (IRA), qualified under § 408, during the IRA Promotional Period, and fund the account with \$Principal 1 or more, you will credit \$Amount 1 to the client's account.

Under the 529 Bonus Plan, for your clients who open a new State § 529 Bonus Plan through you, fund the account with at least \$Principal 2 within \*\*\* days of opening the

account and maintain that amount for a minimum of \*\*\* days, you will credit \$Amount 2 to the client's State § 529 plan account.

You provide these bonus payments to incentivize clients to invest with and through you and to help clients save for retirement and educational costs. You state that you are treating these bonus payments as income to your clients, but do not know whether information reporting is required.

**Ruling Requested:**

1. Does the incentive you paid under your IRA Bonus Plan give rise to information reporting requirements under §§ 6041, 6049, or any other provisions of the Code?
2. Does the incentive you paid under your 529 Bonus Plan give rise to information reporting requirements under section 6041, 6049, or any other provisions of the Code?

**Law:**

Sections 408(a) and (b) respectively define individual retirement accounts and individual retirement annuities, and specify their requirements.

Section 529 exempts from taxation a qualified tuition program, which includes a program established and maintained by a state or agency or instrumentality thereof, to which a person may make contributions to an account established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

Section 6041 generally requires all persons engaged in a trade or business and making certain specified payments of \$600 or more in the course of such trade or business to any other person during the calendar year to (1) make and file an information return with the Service for each calendar year in which they make such payments, and (2) furnish a copy of the information return to that person.

Section 6042 generally requires all persons making payments of dividends aggregating \$10 or more to any other person during the calendar year to (1) make and file an information return with the Service for each calendar year in which they make such payments, and (2) furnish a copy of the information return to that person.

Section 6042(b)(2)(B) carves out from the term dividends distributions and payments made to a person described in § 6049(b)(4), unless otherwise provided in regulations.

Section 6049 generally requires all persons who make payments of interest aggregating \$10 or more to any other person during the calendar year to (1) make and file an

information return with the Service for each calendar year in which they make such payments, and (2) furnish a copy of the information return to that person. See § 6049(a)(1); Treas. Reg. § 1.6049-1(a)(1)(i).

Section 6049(b)(2)(B) provides that except to the extent otherwise provided in regulations, an amount paid to a person described in section 6049(b)(4) is excepted from reporting. Individual retirement plans are included as persons described in section 6049(b)(4), and the regulations do not provide otherwise. The regulations provide that an individual retirement plan, as defined in section 7701(a)(37), is an exempt recipient. See § 6049(b)(4)(B); § 1.6049-4(c)(1)(ii)(C).

Section 7701(a)(37) defines the term "individual retirement plan" to mean an individual retirement account in § 408(a) and an individual retirement annuity in § 408(b).

Section 1.6041-1(a)(1)(ii) provides that payments reportable under that section do not include payments of amounts with respect to which an information return is required by, or may be required under authority of, §§ 6042 or 6049.

Section 1.6042-1(b)(1)(vii) excludes from the term "dividend" with respect to amounts paid or credited after December 31, 1982, any amount paid or credited to any person described in § 1.6049-4(c)(1)(ii), unless certain circumstances occur.

Section 1.6049-4(c)(1)(ii)(C) exempts from information return requirements payments made to an individual retirement plan as defined in § 7701(a)(37).

In Announcement 2008-17, 2008-9 I.R.B. 512, an advance notice of proposed rulemaking, the Service notes that "the IRS and the Treasury Department also have considered the possibility that employers may consider funding section 529 accounts for employees' children or that a debtor may fund an account for the lender's child. Section 529 does not override (or permit avoidance of) federal taxes otherwise applicable to payments that are not in the nature of gifts." "Guidance on Qualified Tuition Programs Under Section 529; Advance notice of proposed rulemaking," 73 Federal Register 13 (18 January 2008), pp 3441 – 3446, 3444.

#### Analysis:

1. Section 6049 provides generally that all persons who make payments of interest aggregating \$10 or more to any other person during the calendar year must (1) file an information return for each calendar year in which they make such payments, and (2) furnish a copy of the information return to that person. See § 6049(a)(1); § 1.6049-1(a)(1)(i). Interest payments made to exempt recipients, as set forth in § 6049(b)(4), are excluded from the information reporting requirements of § 6049 unless regulations provide otherwise. See § 6049(b)(2). Individual retirement plans, as defined in § 7701(a)(37) to mean individual retirement accounts under § 408(a) and individual retirement plans under § 408(b), are exempt recipients under § 6049(b)(4)(B) and

§ 1.6049-4(c)(1)(ii)(C). Therefore, if the incentives (i.e. \$Amount 1) paid pursuant to the IRA Bonus Plan are payments of interest to individual retirement accounts under § 408, they are not subject to the information reporting requirements of § 6049.

If the incentives paid pursuant to the IRA Bonus Plan constitute dividends paid on the individual retirement accounts, rather than interest, they are not subject to the information reporting requirements of § 6042 for similar reasons. Payments made to an exempt recipient under § 6049(b)(4), including an IRA under § 6049(b)(4)(B), are excluded from the term "dividend" for purposes of information reporting under § 6042, unless otherwise provided in regulations. See §§ 6042(b)(2)(B). The regulations under § 6042 do not provide otherwise. Therefore, dividends paid to an IRA under the IRA Bonus Plan are excluded from the information reporting requirements of § 6042. See §§ 1.6042-3(b)(1)(vii); § 1.6049-4(c)(1)(ii)(C).

Because these incentive payments could be subject to information reporting under the authority of §§ 6042 or 6049, they are not subject to information reporting under § 6041. § 1.6041-1(a)(1)(ii). The payments are not subject to any other information reporting requirements.

2. Section 529 exempts from taxation a qualified tuition program, which includes a program established and maintained by a state or agency or instrumentality thereof, to which a person may make contributions to an account established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account ("**QTP**"). Whether payments to such accounts by persons other than the account owner are subject to § 6041 or § 6049 information reporting requirements depends on whether those payments are payments of interest or payments of income to the account owner.

Your payment of \$Amount 2 in connection with the 529 Bonus Plan is not properly characterized as interest on a 529 plan account because it is paid by you of your own accord as a bank and brokerage, and not by or on behalf of State as an establisher and maintainer of the QTP program. Section 529(b)(1) requires QTP's be established and maintained by a state or agency or instrumentality thereof. Under State law, all investment amounts in the 529 Plan are held by State, and not you. Since your payment of \$Amount 2 is of your own accord and not by the State, treatment of the payment as interest would be inconsistent with the requirements of § 529.

Your payment of \$Amount 2 in connection with the 529 Bonus Plan is properly characterized as a payment by you to the client, followed by a contribution by the client to their 529 Plan account. This is consistent with the tax treatment of payments that are not in the nature of gifts, such as employer funding of § 529 accounts. See 73 Federal Register 13 at 3444. You paying \$Amount 2 is similar to non-gift funding of a § 529 account by a third party who is not the account owner. Your payment is also similar to the Service's proposed treatment

of a change in beneficiary which the Service deems a taxable distribution to the account owner followed by a new gift. Id. At 3443.

Section 6041 provides generally that all persons engaged in a trade or business who, in the course of that business, pay another person fixed and determinable gains, profits and income aggregating \$600 or more in any taxable year must (1) file an information return for each calendar year in which they make such payments, and (2) furnish a copy of the information return to that person. See § 6041(a); § 1.6041-1(a)(1). Since the incentives paid under your 529 Bonus Plan are payments of income to the client, followed by a contribution of the same amount by the client to the § 529 account, the payments are subject to the information reporting requirement to the extent that they total \$600 or more. These payments are not subject to any exception under § 6041, and are not subject to any other information reporting requirement.

Ruling:

Based on the foregoing, we rule as follows:

1. Because the incentive payment under the IRA Bonus Plan is characterized as interest or other earnings (e.g. dividend) paid on an IRA, it is not subject to the information reporting requirements of sections 6042 or 6049. It is also not reportable under section 6041 or any other information reporting requirements of the Code.
2. Because the incentive payment under the 529 Bonus Plan is characterized as a payment of income to the client, and not as interest, it is subject to the information reporting requirements of section 6041, to the extent that the total payments equal or exceed \$600.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore R. Lieber  
Manager, Exempt Organizations  
Technical Group 3

Enclosure

Notice 437

Redacted ruling letter.

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.